

REMARKS

This paper is presented in response to the final official action of June 3, 2010, wherein (a) claims 1-3, 5-7, 10-12, 15-17, 19, 20, and 22 were pending, (b) claims 5, 6, and 19 were rejected under 35 U.S.C. § 112 as being indefinite, (c) claim 19 was rejected under 35 U.S.C. § 101 as being an improper definition of a process, (d) claims 1, 2, 5-7, 15, 16, 19, 20, and 22 were rejected as being obvious over U.S. Patent No. 6,685,084 to Timbrook et al. ("Timbrook") in view of U.S. Patent No. 5,525,030 to Buchman ("Buchman"), (e) claims 3, 11, and 12 were rejected as being obvious over Timbrook in view of Buchman and further in view of applicant's alleged admitted prior art ("AAPA") or U.S. Patent No. 3,968,895 to Barnes et al. ("Barnes"), and (f) claims 10 and 17 were rejected as obvious over Timbrook in view of Buchman and further in view of U.S. Patent No. 2,145,430 to New ("New").

By the foregoing, claims 5, 6 and 16 are amended and claim 19 is canceled. Claims 5 and 6 are amended solely to address the § 112 rejections and claim 16 is amended to correct dependency only. Thus, claims 1-3, 5-7, 10-12, 15-17, 20, and 22 are pending and at issue. Claim 1 is the only independent claim in the application.

Entry and consideration of the amendments after final rejection are solicited. The amendments to claims 5 and 6 could not have been made earlier as the § 112 rejection of claims 5 and 6 was first made in the most recent official action. In addition, entry of the claim amendments will reduce issues on appeal.

35 U.S.C. § 112 Rejections

The rejection of claims 5, 6, and 19 as indefinite is overcome by the amendments to claims 5 and 6 and the cancellation of claim 19. In particular, claims 5 and 6 are amended to correct antecedent basis for certain terms therein. Thus, the applicants respectfully request withdrawal of the rejection of claims 5, 6, and 19 as being indefinite.

35 U.S.C. § 101 Rejection

The rejection of claim 19 as being an improper definition of a process is moot in view of the cancellation of claim 19. Thus, the applicants respectfully request withdrawal of the rejection of claim 19.

35 U.S.C. § 103 Rejections

The various obviousness rejections, all based on some combination of Timbrook, Buchman, Barnes, applicants' alleged admitted prior art, and New, are respectfully traversed; reconsideration of the claims, as amended, is solicited.

Claim 1 recites a container comprising, in part, at least three sidewalls that have "an open base and an open top." The claimed container includes at least three sidewalls (shown as element 24 in the drawings) that form a storage area having an open base (22), as illustrated in Fig. 2. The sidewalls 24 are placed directly on the top of a pallet so that products placed within the storage area rest directly on the top of the pallet. Thus, the invention advantageously provides a container with a reduced risk of slippage of a transported product and the container, because the product is placed directly on the pallet. See page 5, lines 16-19 of the application as filed.

Claim 1 also recites a container comprising, in part, a circumferential gap formed between the outer edge of the sidewalls and the peripheral edge of the top of the top of the pallet. The circumferential gap is clearly illustrated in Fig. 3 at 54 and extends completely around the periphery of the sidewalls 24. Thus, the invention advantageously provides a container that alerts workers that a forklift is required to lift the object because of the pallet, which is immediately visible to the worker due to the circumferential gap. See page 5, lines 19-21 of the application as filed.

The prior art fails to disclose a container with an open base

The applicants respectfully traverse the rejection of claims 1-3, 5-7, 10-12, 15-17, 19, 20, and 22 as being obvious over Timbrook in view of one or more of Buchman, Barnes, AAPA, and New, collectively the "cited art." The applied art fails to disclose or suggest all claim limitations. In particular, the cited art fails to disclose

or suggest a container having at least three sidewalls that define a storage area having an open base.

It is clear from the official action, that the only prior art reference relied upon to allegedly show a container having an open base is Timbrook. See the official action at page 3. The applicants respectfully disagree and submit that Timbrook fails to disclose or suggest a container having an open base because the examiner has interpreted Timbrook far too broadly. The examiner points to col. 1, lines 20-25 in support of his conclusion that Timbrook discloses a container having an open base. See the official action at page 3. However, the disclosure appearing at col. 1, lines 20-25 of Timbrook, which is reproduced below, simply teaches that a container may be formed without top and/or bottom flaps, not that a container may be formed without a top or bottom.

Known bulk bins are generally formed as multi-sided paperboard containers sized to fit on a standard grocery pallet (i.e., with a width and depth of approximately 40 inches by 48 inches.) Such containers may include top and/or bottom flaps, or may be formed simply as a sleeve.

The cited passage of Timbrook teaches only that bulk bins may be formed with or without top or bottom flaps. The cited passage does not teach (expressly or inherently) that the bulk bins themselves should or could be made without tops or bottoms. In fact, the two sentences immediately following the cited passage indicate that these bulk bins have bottoms to support produce contained placed in the bulk bins. In particular, Timbrook teaches in col. 1, lines 26-30 that the bulk bins are made of triple wall corrugated material to “accommodate the heavy weight of the product that is packed” in the bulk bins and that these products may range from 600 pounds to 1200 pounds “in a single bulk bin container.” In order for the bulk bin to accommodate the weight of a product, the product must be placed on a bottom of the bulk bin. Timbrook further teaches that these bulk bins are formed and loaded in actual growing areas and then “stacked two-or-three high” for shipping. See Timbrook, col. 1, lines 32-34. If these bulk bins did not have bottoms, they could not be stacked as taught by Timbrook. Thus, the applicants respectfully submit that the

examiner failed to read the cited passage in its proper context. When put in proper context, Timbrook clearly teaches that the bulk bins have bottoms.

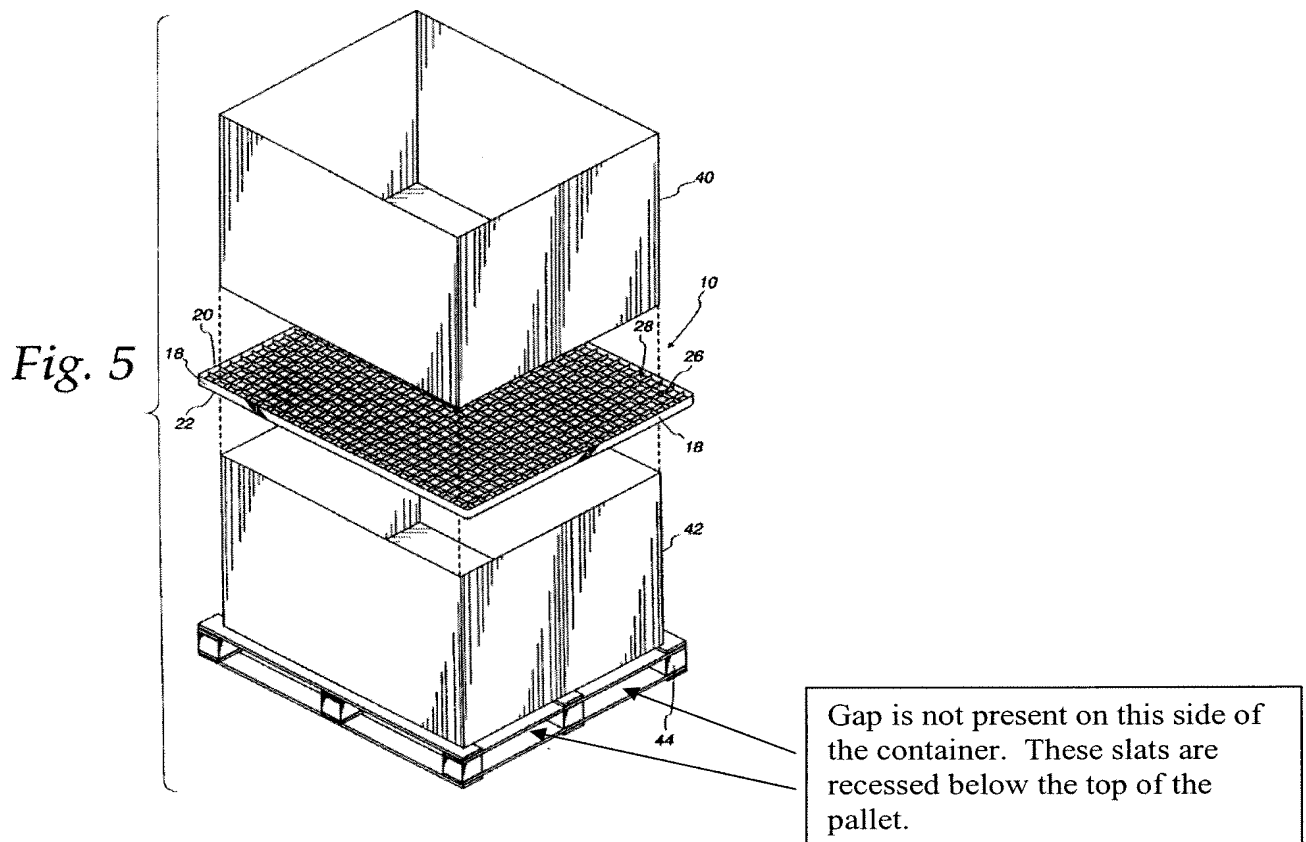
None of Buchman, Barnes, AAPA, and New discloses or suggests a container having an open base, nor were Buchman, Barnes, AAPA, and New cited as disclosing such an element.

Because the cited art fails to disclose or suggest a container having at least three sidewalls that define a storage area having an open base, none of the pending claims can be rendered obvious over any combination of the cited art. For this reason, the applicants respectfully request withdrawal of the rejection of claims 1-3, 5-7, 10-12, 15-17, 19, 20, and 22.

The prior art fails to disclose a circumferential gap between the sidewalls and the edge of the pallet top

The applicants respectfully traverse the rejection of claims 1-3, 5-7, 10-12, 15-17, 19, 20, and 22 as being obvious over any combination of the cited art. The applicants respectfully submit that the cited art fails to disclose or suggest all claim limitations. In particular, the cited art fails to disclose or suggest a circumferential gap between the sidewalls and the edge of the pallet top.

It is clear from the official action, that the only prior art reference relied upon to allegedly show a circumferential gap between the sidewalls and the edge of the pallet top is Buchman. See the official action at page 4. However, Buchman fails to disclose or suggest a circumferential gap that extends around an outer edge of at least three sidewalls, as claimed. Rather, at least two sides of the container illustrated in Figs. 5 and 6 of Buchman fail to include a circumferential gap. As illustrated in Fig. 5, reproduced below, the top of the pallet in Buchman does not include a solid planar surface.



Because the top of the pallet is not a solid surface, two sides of the pallet include gaps between the top planks. Thus, on at least two sides of the pallet, the gaps prevent the formation of a circumferential gap in a top surface of the pallet because there is no top surface where the gaps would exist. For at least this reason, Buchman fails to disclose or suggest a planar top of a pallet that forms a circumferential gap between the outer edge of at least three sidewalls and a peripheral edge of the top of the pallet, as recited in each of the pending claims.

Timbrook, Barnes, and New all fail to disclose or suggest a circumferential gap between the outer edge of at least three sidewalls and a peripheral edge of the top of the pallet, nor were Timbrook, Barnes, and New cited as disclosing such an element.

Because the cited art fails to disclose or suggest a planar top of a pallet that forms a circumferential gap between the outer edge of at least three sidewalls and a

peripheral edge of the top of the pallet, none of the pending claims can be rendered obvious by any combination of the cited art. For this additional reason, the applicants respectfully request withdrawal of the rejection of the pending claims.

Claims 15 and 16

The applicants respectfully traverse the rejection of claims 15 and 16 because the cited art fails to disclose or suggest a pallet having a planar and solid top. Each of claims 15 and 16 recites a container comprising, in part, a top of the pallet that forms a solid base for the sidewalls. Thus, the top of the pallet is both planar and solid. The cited art fails to disclose or suggest a top of a pallet that is both planar and solid. Rather, the cited art discloses standard wooden pallets that have top slats separated by gaps (i.e., not solid) or no pallets at all.

Timbrook fails to disclose or suggest a pallet having a planar and solid top. Rather, Timbrook discloses only a “standard grocery pallet.” See Timbrook col. 1, lines 21-22. One of ordinary skill in the art would understand a “standard grocery pallet” to be formed of wood having spaced apart slats along a top portion. Thus, one of ordinary skill in the art would understand that Timbrook does not disclose a pallet having a planar and solid top. Beyond the disclosure of a “standard grocery pallet,” Timbrook fails to expressly disclose or suggest any particular pallet structure. For these reasons, the applicants respectfully submit that Timbrook fails to disclose or suggest a pallet having a planar and solid top.

Buchman, like Timbrook, discloses only a standard pallet having spaced apart slats that form a pallet top, as discussed above. Thus, Buchman fails to disclose or suggest a pallet having a planar and solid top.

Barnes and New fail to disclose or suggest any pallet whatsoever, let alone a pallet with a planar and solid top.

Because the cited art fails to disclose or suggest a pallet having a planar and solid top, claims 15 and 16 cannot be rendered obvious by any combination of the cited art. For this additional reason, the applicants respectfully request withdrawal of the rejection of claims 15 and 16.

Conclusion

For all the foregoing reasons, it is submitted that all pending claims are of proper form and scope for allowance, and such action is solicited.

Should the examiner wish to discuss the foregoing or any matter of form in an effort to advance this application toward allowance, he is urged to telephone the undersigned at the indicated number.

August 3, 2010

Respectfully submitted,

By 

Michael A. Chinlund, Reg. No. 55,064
MARSHALL, GERSTEIN & BORUN LLP
6300 Wills Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357
(312) 474-6300
Agent for Applicant